

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 FRANK H. PACOE, State Bar No. 91740  
Supervising Deputy Attorney General  
4 California Department of Justice  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-5556  
6 Facsimile: (415) 703-5480

7 Attorneys for Complainant

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10 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**  
12

13 In the Matter of the Accusation Against:

Case No. *2008-187*

14 **MARK ALAN McSHARRY**

P.O. Box 684

15 Rutherford, California 94573-0079

**A C C U S A T I O N**

16 Registered Nurse License No. 469684

17 Respondent.  
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19 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

20 **PARTIES**

21 1. Complainant brings this Accusation solely in her official capacity as the  
22 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer  
23 Affairs.

24 2. On or about January 31, 1991, the Board issued Registered Nurse License  
25 Number 469684 to Mark Alan McSharry ("Respondent"). The license expired on July 31, 2005,  
26 and has not been renewed.

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4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811(b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761(a) states, in pertinent part, that the Board may take disciplinary action against a licensed nurse for unprofessional conduct.

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

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7. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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1                   **DRUGS**

2                   8.       "Demerol," a brand of meperidine hydrochloride, a derivative of pethidine,  
3 is a Schedule II controlled substance as designated by Health and Safety Code section  
4 11055(c)(17).

5                   9.       "Versed" is a brand name for Midazolam Hydrochloride and a Schedule IV  
6 controlled substance as designated by Health and Safety Code section 11057(d)(21).

7                   **FIRST CAUSE FOR DISCIPLINE**

8                   **(Obtained, Possessed and Self-Administered Controlled Substances)**

9                   10.       Respondent is subject to discipline under Code section 2761(a), on the  
10 grounds of unprofessional conduct as defined in Code section 2762(a), in that on or about  
11 September 14, 2004, while employed as the Outpatient Surgery Center Unit Coordinator at St.  
12 Helena Hospital, Deer Creek, California, Respondent did the following:

13                   a.       Obtained Demerol and Versed, controlled substances, by fraud, deceit,  
14 misrepresentation or subterfuge or by the concealment of a material fact, in violation of Health  
15 and Safety Code section 11173(a), by drawing up vials of medications in preparation for patients  
16 who were scheduled to have medical procedures performed, withdrawing the contents of the  
17 vials, refilling the vials with saline, then taking the medications for his own personal use.

18                   b.       Possessed Demerol and Versed, controlled substances, in violation of  
19 Code section 4060, in that Respondent did not have a prescription for those controlled  
20 substances.

21                   **DISCIPLINE CONSIDERATIONS**

22                   To determine the degree of discipline, if any, to be imposed on Respondent,  
23 Complainant alleges that on or about February 15, 1992, in a prior disciplinary action entitled In  
24 the Matter of the Statement of Issues Against Mark Alan McSharry before the Board of  
25 Registered Nursing, in Case Number 1992-36, respondent's application for licensure was denied  
26 based on two criminal convictions. The license denial was stayed and the respondent was issued  
27 a probationary license that was placed on probation for three years. Respondent successfully  
28 completed his probation on February 14, 1995. That decision is now final and is incorporated by

1 reference as if fully set forth.

2 **PRAYER**

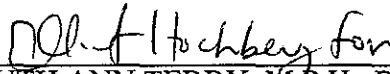
3 **WHEREFORE**, Complainant requests that a hearing be held on the matters  
4 herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

5 1. Revoking or suspending Registered Nurse License Number 469684, issued  
6 to Mark Alan McSharry;

7 2. Ordering Mark Alan McSharry to pay the Board of Registered Nursing the  
8 reasonable costs of the investigation and enforcement of this case, pursuant to Code section  
9 125.3; and,

10 3. Taking such other and further action as deemed necessary and proper.

11 DATED: 12/13/07

12   
13 RUTH ANN TERRY, M.P.H., R.N.  
14 Executive Officer  
15 Board of Registered Nursing  
16 Department of Consumer Affairs  
17 State of California  
18 Complainant

17 SF2006400513  
18 Accusation (kdg) 11/26/07